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SENATE

REPORT
99-390

S223

MILDRED C. EIDE

ORIGINAL

AUGUST 12 (legislative day, AUGUST 11), 1986.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Res. 48]

The Committee on the Judiciary, to which was referred the resolution (S. Res. 48) to refer S. 273, for the relief of Mildred C. Eide, to the chief judge of the United States Claims Court, having considered the same, reports favorably thereon without amendment and recommends that the resolution do pass.

PURPOSE

This resolution would refer S. 273, entitled "A bill for the relief of Mildred C. Eide," to the chief judge of the United States Claims Court. S. 273 authorizes and directs the Secretary of the Treasury to pay to the claimant a sum of money to be determined by the Claims Court.

STATEMENT OF FACTS

In October 1976, Mildred C. Eide, curator of the Fort Leavenworth Museum in Leavenworth, Kansas, was sexually assaulted by an inmate of the U.S. Disciplinary Barracks at Fort Leavenworth. She sustained permanent facial disfiguration and the loss of an eye. The inmate, Mr. Barnett, was assigned to work detail at the museum while serving a sentence for rape and sodomy charges.

There were no male supervisors at the museum on the day of the attack. Mrs. Eide had been previously assured that only minor offenders would be assigned work detail and that male personnel would supervise at all times.

The U.S. District Court for the District of Kansas entered a default judgment in favor of Mrs. Eide for $1 million. The Govern-

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ment has invoked its sovereign immunity defenses. The judgment remains uncollectable since the only liable party is the prisoner, who is judgment proof. Mrs. Eide is barred under the Federal Tort Claims Act from pursuing her claim due to the exclusivity provisions of the Federal Employees Compensation Act (FECA), from which she currently benefits.

The Departments of Justice and Labor oppose the passage of this legislation and has stated that benefits are already being provided by FECA and further compensation would threaten the integrity of the FECA system.

After careful examination of the grievous circumstances surrounding this claim and in light of the original judgment award of $1 million, the Committee on the Judiciary favorably reports this legislation. A congressional reference will allow Mrs. Eide to pursue a fair and equitable remedy.

The following documents were submitted to the Senate with regard to Mrs. Eide's claim:

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, April 27, 1984.

Hon. CHARLES E. GRASSLEY,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to present the views of the Department of Labor regarding S. 913 and S. Res. 96, private relief measures for the benefit of Mildred C. Eide of Leavenworth, Kansas.

The Department of Labor opposes enactment of S. 913 and S. Res. 96.

S. 913 would provide for payment of compensation in an unspecified amount to Mildred C. Eide for personal injury, expenses, and damages inflicted by an inmate of the United States Disciplinary Barracks at Fort Leavenworth. At the time of the assault, the inmate was on a parolee detail to the base museum where Mrs. Eide was curator.

S. 913 does not specify the amount of compensation to be paid to Mrs. Eide. A companion resolution, S. Res. 96, would refer the bill to the U.S. Claims Court under provisions of law requiring the Court in Congressional reference cases to produce findings of fact and "conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant." 28 U.S.C. §§ 1492, 2509.

Mrs. Eide is receiving compensation for her injuries under the Federal Employees' Compensation Act ("FECA"). As a FECA beneficiary she has received compensation for total disability since 1976. Mrs. Eide presently receives tax-free compensation at the rate of $1,732 every four weeks. We have enclosed a more detailed statement of the benefits received by Mrs. Eide. It is likely that her present disability status will continue throughout her lifetime.

This Department opposes enactment of these special relief measures which would provide additional compensation to a FECA beneficiary. FECA is intended to be the sole and exclusive remedy avail-

able to Federal employees injured in the course of their employment. A primary purpose of FECA is to provide uniform and equal treatment for all those injured in the performance of their duty.

Awarding special relief, even in Mrs. Eide's case, would be inequitable in relation to other FECA beneficiaries who also may have been severely injured in the course of their duties. Moreover, awarding special relief in this case would be an unfortunate precedent which could erode the comprehensive FECA system. For the foregoing reasons, the Department of Labor opposes enactment of S. 913 and S. Res. 96.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAYMOND J. DONOVAN.

Enclosure.

ENCLOSURE TO LETTER OF DEPARTMENT OF LABOR, TO CHAIRMAN, SENATE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE REGARDING S. 913 AND S. RES. 96

Benefits received by Mrs. Eide

Amount currently received every 4 weeks in tax-free FECA benefits for total disability	$1,732
Gross disability benefits paid as of Mar. 14, 1984	135,653.69
Medical expenses paid to date	24,006

In addition, the Office of Personnel Management has paid benefits to Mrs. Eide during the 160-week period when she received a schedule award for the loss of an eye.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 7, 1984.

Hon. CHARLES E. GRASSLEY,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of March 30, 1983, addressed to the Attorney General, seeking a report on S. 913 and S. Res. 96, private relief bills for the relief of Mildred C. Eide. S. 913 would direct and authorize the Secretary of the Treasury to pay Mildred C. Eide of Leavenworth, Kansas, an unspecified sum in full settlement of her claims for compensation for personal injury incurred by her on October 14, 1976, as a result of an assault upon her by James D. Barnett, an inmate at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, allegedly resulting from the negligence of United States military personnel. S. Res. 96 would refer the matter of Mrs. Eide's claim to the Chief Judge of the United States Claims Court for findings of fact and conclusions sufficient to inform the Congress of the amount, if any, legally or equitably due from the United States to the claimant. Mrs. Eide was, in fact, the victim of a vicious, unprovoked attack by an inmate of the Disciplinary Barracks on the date in question from which she sustained serious injury. Unfortunately, for the reasons

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set forth below, the Department of Justice must recommend against enactment of the proposed legislation.

In 1977, Mrs. Eide sued her attacker, James D. Barnett, and several officers of the United States Disciplinary Barracks, Fort Leavenworth, Kansas. The officers were personally sued for alleged negligence in the assignment of Barnett to the base museum of which Mrs. Eide was the curator and where the attack occurred. Mrs. Eide did not sue the United States because she was a Federal employee at the time of the incident, thereby entitling her to the benefits of the Federal Employees Compensation Act and consequently barring her from suing the United States under 5 U.S.C. § 8116(c).

At the time of the incident in question, Mr. Barnett was a member of the base Local Parolee Unit (LPU) of the Disciplinary Barracks. There was then in place an extensive screening, rehabilitation and classification process for those confined at the barracks. Through a system of evaluative boards and reports, inmates would normally advance during their tenure from "C" to "A" custody, each of which classification involved a greater degree of freedom and responsibility for the inmate. The object of this system, and the mission of the Disciplinary Barracks, was to gradually return an inmate to civilian society or to military service. Inmates would progress through these degrees of custody, regardless of the offense for which they had been committed, through a series of evaluative boards which would review progress in confinement and on the job, as well as all other relevant factors.

The classification of an inmate as a "minimum A" custody prisoner was the final step in the custody elevation and evaluation process. The significance of such a classification was that the inmate would be domiciled outside of the prison walls at the LPU, where there were no physical restraints, and would work in one of a number of details on the base in contact with the civilian population. Eventually, an inmate would be detailed to a "work release" assignment in the civilian community off of the base.

The process related above was that through which James Barnett progressed. Throughout his tenure at the Disciplinary Barracks until the incident in question, he had maintained an excellent prisoner record. Upon consideration for elevation to "minimum A" custody, he received a comprehensive evaluation which included his past offense, his entire correction treatment file, and current evaluations by a psychiatrist, his work supervisor and domicile supervisor. In his assignments prior to the base museum, Barnett had been called upon to work in the proximity of women and children and had done so without incident. The incident in question occurred on the second day of his reporting to that detail.

The use of LPU members as staff at the museum was expressly conditioned on the requirement that direct male supervision be provided for the LPU workers at all times. Mrs. Eide was aware of that requirement and, indeed, had expressly agreed to it. On the day of the assault, however, Mrs. Eide was alone with Mr. Barnett. Shortly before the assault, he came into her partitioned office and asked a question to which she responded. A few minutes later, he returned to ask another question. She attempted to assist him by showing him where certain materials were located and was, at that

point, attacked, sustaining severe injuries, including the loss of sight in one eye.

The foregoing demonstrates that, while the government was not negligent in placing Mr. Barnett in the program or in his position at the museum, nor in establishing the appropriate conditions under which he was to work at the museum, it was responsible for the presence of Mr. Barnett in the museum. Furthermore, there is no question that Mrs. Eide suffered serious injuries in the attack. In 1981, Mrs. Eide's suit against several officers of the United States Disciplinary Barracks at Fort Leavenworth was dismissed on the grounds of immunity from common law torts. She was subsequently awarded a default judgment against her attacker, upon which she is unlikely to collect.

However, Mrs. Eide has received substantial FECA benefits. In fact, we have been advised by the Labor Department that she is being compensated at the present time at a substantially higher rate under FECA than she would have been compensated under her government pay with normal pension benefits, had she been able to work until retirement. To the extent that she is afforded private relief, she will be receiving benefits not available to other similarly-situated employees who must rely exclusively on FECA benefits. Although the Department sympathizes with Mrs. Eide's situation, similar equities are likely to exist with respect to other claimants, and an unfortunate precedent eroding the comprehensive system of FECA compensation might be established by awarding private relief in this case.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Your interest in this matter is appreciated.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

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